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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/004,057	11/02/2001	Lawrence E. Leahy	16524-3	6682

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EXAMINER

NGUYEN, CHI Q

ART UNIT	PAPER NUMBER
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3635

DATE MAILED: 05/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/004,057

Applicant(s)

LEAHY, LAWRENCE E.

Examiner

Chi Q. Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4-33,35 and 36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,4,9 and 11 is/are allowed.
- 6) ☒ Claim(s) 5-8,10,12-19,24-29,31-33 is/are rejected.
- 7) ☒ Claim(s) 20-22,30,35-36 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on 02 November 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

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DETAILED ACTION

This Office action is in response to the applicant's amendment filed on 3/11/04.

Upon further consideration, the previously stated allowed claims being withdrawn. And with new arts and new ground of rejections are present as following:

Claim Objections

Claims 35 and 36 are objected to because of the following informalities: the independent claim 31 is drawn to a subcombination of an anchor member. A sign support member and a breakaway signpost connector that includes a shear bolt and a spring are not positively claimed. However, claims 35 and 36 are claimed as combination with an anchor member. Therefore, the examiner treated claims 35 and 36 as combination claims.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 5-8, 10, 12-19, 23-29 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 8-20 of U.S.

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Patent No. 6,308,927. Although the conflicting claims are not identical, they are not patentably distinct from each other because the scope between patented applicant's claims appears to be the same as the applicant's new claims except for the term variation such as "a spring" used in the instant claims instead of "a bushing" used in the patented claims. And the instant claim 23 is corresponding to the patented claim 24 except for the necked-down section has a maximum diameter that is smaller in diameter than the first end and the second end, examiner considers the term "necked-down section" is implied for the smaller diameter in comparing to the first and second ends.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 6 is rejected under 35 U.S.C. 102(b) as being anticipated by Barnes (US 4,007,563).

Barnes teaches a connector comprising a shear member 12 having a first end 22, a second end 20, and a neck down section 26 between the first and second ends 22, 20, respectively; wherein the shear member 12 comprises a shoulder 28 extending between the first and second ends, and a spring 24 surrounding the shear member 12 and supporting the neck down section 26 (see fig. 2).

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States

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only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claim 31 is rejected under 35 U.S.C. 102(e) as being anticipated by Marshall (US 6,390,734).

Marshall teaches anchoring a piling to a slab comprising an elongated ground member 13 having an opening extending there through, a first end and a first end wall 29, and an anchor plate 21 coupled to the ground member 13 at the first end of the ground member and first end wall form a recess within the first end of the ground member. The anchor plate 21 coupled to the first end wall adjacent the first end and spaced from the first end face (see fig. 1).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 32, and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marshall (US 6,390,734) in view of Payne (US 5,400,997).

Marshall teaches the structural elements for the anchoring device as stated except for the ground member is generally square cross-section. Payne teaches adjustable anchoring base for post comprising a ground member 1 is an elongated, generally square cross-section comprising an opening extending there through (see fig. 1, col. 1, line 68). At the time of the invention, it would have been obvious to a person of

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ordinary skill in the art to combine Marshall with Payne for a ground member having a generally square cross-section. The motivation for doing so would have been to provide a ground member more shaped variations thus for anchoring at square corners or 90-degree corners.

Allowable Subject Matter

Claims 1, 4, 9, and 11 were allowed.


Claim 20-22, 30, 35, and 36 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communication from the examiner should be directed to Chi Q. Nguyen whose telephone number is (703) 605-1224, Mon-Thu (7:00-5:30), Fridays off or examiner's supervisor, Carl Friedman can be reached at (703) 308-0839. The fax number for the organization where this application or proceeding assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

CQN
5/11/04


Carl D. Friedman
Supervisory Patent Examiner
Group 3600